IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

CRL.A.No. 277 of 2001(A)

CC.58/1998 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA
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APPELLANT(S): COMPLAINANT

V.VASANTHA, W/O.RAJAN,
KALARICKAL HOUSE, KUMARAMANGALAM P.O.,
KUMARAMANGALAM KARA,
KUMARAMANGALAM VILLAGE.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENT(S): ACCUSED
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1. **C.K.MOHANAN, CHIRAKKARAYIL HOUSE,**
PERUMBILLICHIRA KARA,
KUMARAMANGALAM VILLAGE.

2. **STATE OF KERALA,**
REPRESENTED BY THE
PUBLIC PROSECUTOR ,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.C.K.VIDYASAGAR
R2 BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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K.HEMA, J.

CRL.A.NO. 277 of 2001

Dated this the 14th day of March, 2007

J U D G M E N T

This appeal is filed against an order of acquittal. The learned Magistrate has acquitted the accused-respondent finding him not guilty under Section 138 of the Negotiable Instruments Act ('the Act', for short). The complainant, therefore, filed this appeal.

2. According to the complainant, appellant gave Rs.1,50,000/- to the accused who undertook to repay the amount within six months. The accused thereafter, on 27.9.1997 brought a type-written cheque and affixed his signature at her residence for the discharge of the debt. The cheque was dishonoured on presentation to the bank. Notice was issued. It was received by the authorised agent who was the sister. The accused did not respond to the notice. Thereafter a complaint was filed under Section 138 of the Act complying with the legal requirements.

3. On analysis of the evidence adduced in the case, the trial court found that the evidence let in by the complainant itself proves that her case that she paid Rs.1,50,000/- to the accused on 10.6.1996 is false. Learned counsel for the appellant strongly contended that the findings of the court below that the cheque was not executed by the accused are not proper. It was pointed out that the court found it is “abnormal” to get a cheque type-written. The probability is that if a person wants to conceal

the identity of his hand writing in the cheque, it may be type-written. The accused was acquitted only on ground that the cheque was not executed. According to learned counsel for appellant, this finding cannot be sustained, since there is no abnormality in getting a cheque type-written.

4. I am not going into the above controversy. Even if the cheque is found to be executed or drawn by the accused, as alleged, prosecution will be bound to prove that such drawing of the cheque was for the purpose of discharging a debt or liability. The prosecution has to adduce evidence to show that the cheque was drawn for the purpose of discharging a debt or liability which the accused incurred in favour of the complainant.

5. Of course, in cases where the pre-requisites under Section 139 of the Act are made out, the court may presume that the cheque was received by the holder of the cheque for the discharge of a debt or liability. Even if this presumption is drawn to hold that the cheque is received by the complainant for the discharge of a debt or liability, it is open to the accused to rebut such presumption. So, what is relevant is whether the court can enter a finding on the basis of evidence that the cheque was drawn for the discharge of a debt or liability.

6. The court below has considered the evidence at length. The case set up by the complainant that Rs.1,50,000/- was borrowed by the accused and it was paid by the complainant to him is false. Various reasons are given by the trial court to enter such finding. The evidence of PW1 is

considered at length by the trial court to arrive at a conclusion that the case set up by the complainant that she paid Rs.50,000/- to the accused is false.

7. Learned counsel for appellant argued that PW1 asserted in her evidence that she had raised the money by herself through her mother, and also by selling gold ornaments and paid the same to the accused. It is true that such version is given by PW1. But, it has come out from her evidence that she was giving contrary statements regarding the source of income and the manner in which she had raised the money. The court below considered all these aspects minutely and I find that those findings are only consistent with the evidence adduced in this case. I do not find any perversity in those findings and there is no impropriety, either. Therefore, the finding that the complainant's case that she paid Rs.1,50,000/- to the accused is false cannot be interfered with.

8. If that be the case, no debt arose and there was no question of arising a situation to draw a cheque for the discharge of any such debt or liability. The accused has thus succeeded in establishing by cross examining PW1 herself that the case set up by her is false. That itself cuts the root of the prosecution case. In an offence under Section 138 of the Act, it is not sufficient if execution of cheque is proved, but the court must be satisfied either by direct evidence adduced by the prosecution or by virtue of a presumption under Section 139 of the Act that the cheque was

drawn for the discharge of a debt or liability.

9. In the absence of establishing one of the most crucial factor to constitute an offence under Section 138 of the Act that the drawing of the cheque was for the purpose of discharge of a debt or liability, an accused cannot be convicted. The presumption, if any, which can be drawn under Section 139 of the Act stands rebutted also by the evidence of PW1 itself. Therefore, the order of acquittal is only proper, legal and correct. There is no ground to interfere with the order of acquittal.

The Criminal Appeal is dismissed.

K.HEMA, JUDGE

vgs.